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November 14, 2022

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Proposed Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts (*Docket No. OP-1779*)

Dear Ms. Misback,

The Independent Community Bankers of America¹ (“ICBA”) appreciates the opportunity to comment on the proposed policy statement on prudent commercial real estate loan accommodations and workouts² (“Proposed Policy Statement” or “Proposal”) published by the Board of Governors of the Federal Reserve System (“the Board”). If finalized, the Proposal will update and supersede the Board’s 2009 policy statement on prudent commercial real estate loan workouts³ (“2009 Policy Statement”) by incorporating (1) recent policy guidance on short-term loan accommodations; (2) revisions to reflect accounting developments for estimating

¹ The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With nearly 50,000 locations nationwide, community banks constitute roughly 99 percent of all banks, employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5.8 trillion in assets, over \$4.9 trillion in deposits, and more than \$3.5 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America.

² Board of Governors of the Federal Reserve System, *Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts*, Docket No. OP-1779, 87 FR 56658 (Sept. 15, 2022) available at: <https://www.federalregister.gov/documents/2022/09/15/2022-19940/policy-statement-on-prudent-commercial-real-estate-loan-accommodations-and-workouts>.

³ Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, Office of Thrift Supervision, and the Federal Financial Institutions Examination Council State Liaison Committee, *Policy Statement on Prudent Commercial Real Estate Loan Workouts*, SR 09-7 (Oct. 30, 2009) available at: <https://www.federalreserve.gov/boarddocs/srletters/2009/sr0907.htm>.

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loan losses; and (3) revised and additional examples of commercial real estate loan workouts and accommodations.

ICBA supports the Board's efforts to provide clearer guidance to insured depository institutions and to memorialize current practices. Additionally, we applaud the Board for proposing practical, tailored updates to the 2009 Policy Statement while encouraging financial institutions to work prudently and constructively with creditworthy borrowers who are experiencing financial difficulty.

As a general matter, the Proposal appropriately recognizes financial institutions face significant challenges when working with distressed borrowers, and the Proposal's hypothetical examples are a helpful resource for community banks. Nevertheless, we believe there are some areas where the Proposal could be improved. As explained below, we urge the Board to (1) include more specific language in the Proposal by defining words like "comprehensive" and "reasonable terms," and by clarifying regulatory expectations for the frequency in which community banks must update financial and collateral information for distressed borrowers; (2) clarify that for purposes of evaluating the repayment capacity for commercial borrowers, "market conditions" should be primarily informed by trends within a community bank's actual, local market(s), rather than urban, statewide, regional, or national trends; (3) require examiners to supply empirical data if a bank and its experts disagree with regulators about adjustments to collateral valuation to reflect current "market conditions." During the 2008 economic downturn, there were many disagreements between community banks and examiners concerning collateral valuations and troubled debt restructurings which is why we urge the Board to make its guidance as clear as possible.

I. The Proposal should clarify what constitutes a "comprehensive review" and "reasonable terms."

The Proposal states "financial institutions that implement prudent CRE loan accommodation and workout arrangements after performing a *comprehensive review* of a borrower's financial condition will not be subject to criticism for engaging in these efforts, even if these arrangements result in modified loans that have weaknesses that result in adverse classification. In addition, modified loans to borrowers who have the ability to repay their debts according to *reasonable terms* will not be subject to adverse classification solely because the value of the underlying collateral has declined to an amount that is less than the outstanding balance."⁴ (emphasis added).

⁴ Proposal at 56659 - 56660.

The amount of financial information a community bank must collect from a distressed borrower to perform a “comprehensive review” of a borrower’s financial condition remains subject to a significant degree of supervisory discretion. Many borrowers facing financial duress have difficulty producing sufficient financial information, particularly projected financial information, in a timely manner that satisfies regulatory scrutiny. As such, we urge the Board to instruct examiners and senior agency staff to be reasonable, measured, and flexible in determining the appropriate amount of financial information a community bank must collect from a distressed borrower to satisfy the Board’s requirements for a “comprehensive review.” Similarly, the Board should provide further guidance on what constitutes “reasonable terms,” as well as the criteria the Board will consult to determine whether a borrower has the ability to repay their debts according to “reasonable terms.” At a minimum, the Board should include a requirement in the Proposal that an examiner cannot deem terms unreasonable without citing some empirical data to support his/her disagreements with a bank or the bank’s experts.

The proposal also states, “prudent internal controls related to loan accommodations include comprehensive policies and practices, proper management approvals, and timely and accurate reporting and communication.”⁵ Because the word “comprehensive” is commonly understood to mean “complete,” this term can be easily misapplied by examiners to require exhaustive documentation, reporting, and communication, resulting in situations where no amount of documentation, regardless of the quality or volume, will be deemed “comprehensive.”⁶ To improve clarity, we suggest the Board replace the term “comprehensive” with the term “descriptive.”

The Board should also clarify supervisory expectations about the frequency in which examiners expect community banks to update and assess financial and collateral information, maintain appropriate risk grading, and ensure proper tracking and accounting for loan accommodations. If examiners expect updates on a quarterly, monthly, or more frequent basis, it would be useful for the Board to explain supervisory expectations about how timing supports prudent risk management practices, and the factors that warrant changes to, or more frequent, updates.

⁵ *Id* at 56661.

⁶ See *Oxford English Dictionary*, defining the word “comprehensive” as “complete; including all or nearly all elements or aspects of something.” OED Online. Oxford University Press, September 2022.

II. An examiner's analysis of "market conditions" should be motivated by trends in a community bank's actual, local market(s).

The Proposal directs examiners to analyze a commercial borrower's repayment ability by considering a number of factors, including "[m]arket conditions that may influence repayment prospects and the cash flow potential of the business operations or underlying collateral."⁷ Because market conditions fluctuate drastically within and across markets, particularly during periods of economic stress, it is imperative examiners evaluate "market conditions" by relying primarily on realistic conditions existing within the bank's actual, local market(s). Community banks have limited footprints, and the economic conditions within their local market(s) may be markedly different than those materializing within other broader markets. While economic conditions emerging or occurring within a state, region, or national market may ultimately help stress test or inform analysis of market conditions, large market trends should not be unnecessarily imported or superficially replace the actual conditions that exist within a community bank's local market(s). Accordingly, we encourage the Board to include language in the Proposal to explicitly instruct examiners to give weight to actual market conditions within a community bank's local market(s).

III. The Board should require examiners to cite empirical data to support examiner-adjusted valuations of collateral to reflect "market conditions."

This same, narrow approach to "market conditions" should be applied if weaknesses are noted in supporting documentation, appraisal or evaluation review and examiners adjust the value of collateral to reflect current market conditions and events. In particular, when examiners suggest impairment is needed, but loan values are otherwise supported by a community bank, its local appraisers, or other professionals, examiner-adjusted valuations should be supported by empirical data to best explain the regulators' analysis of "market conditions." We urge the Board to include this requirement in the Proposal to provide more transparency into valuation adjustments, limit examiner discretion, and ensure examiners do not broadly interpret the term "market conditions" to artificially impose big bank or large market conditions on the hyper-local markets served by community banks.

Disagreements among examiners and banks are ripe when examiners have discretion to impose requirements upon banks without citing data to support their decisions. **To ensure banks, their experts, and examiners can resolve disagreements swiftly, thereby reducing the need for a supervisory appeal to be filed, the Board should expressly require that examiners cite**

⁷ Proposal at 56662.

empirical data to support analysis of “market conditions,” particularly when examiners suggest impairment is needed.

IV. Conclusion.

ICBA appreciates the Board’s efforts to provide useful, up-to-date guidance to community bankers for prudently managing commercial loan accommodations and workouts. We agree with the Board that some of the principles discussed in the Proposal may be appropriate for commercial and industrial lending secured by personal property or other business assets, and the Board should more explicitly address this type of lending in its revisions to the 2009 Policy Statement. Should you have any questions or wish to discuss these comments in more detail, please contact Jenna Burke at jenna.burke@icba.org.

Sincerely,



Jenna Burke
Senior Vice President
Senior Regulatory Counsel
Independent Community Bankers of America